

IN THE INCOME TAX APPELLATE TRIBUNAL
DELHI BENCHES : E : NEW DELHI

BEFORE SHRI NARENDRA KUMAR BILLAIYA, ACCOUNTANT MEMBER
AND
SHRI ANUBHAV SHARMA, JUDICIAL MEMBER

ITA No.4945/Del/2019
Assessment Year: 2012-13

M/s Net Agri Company Pvt. Ltd., Vs ITO,
Khasra No.78/107/1, Ward No.18(1),
Extended Lal Dora, Bakoli, New Delhi.
Delhi – 110 036.

PAN: AADCN5792Q

ITA No.4495/Del/2019
Assessment Year: 2012-13

ITO, M/s Net Agri Company Pvt. Ltd.,
Ward-18(1), Khasra No.78/107/1,
New Delhi. Extended Lal Dora, Bakoli,
Delhi – 110 036.

PAN: AADCN5792Q

(Appellants)

(Respondents)

Assessee by : Ms Smriti Sahay, Advocate &
Ms Aishwarya Singh, Advocate
Revenue by : Shri M.P. Dwivedi, Sr. DR
Date of Hearing : 20.11.2023
Date of Pronouncement : 24.11.2023

ORDER

PER ANUBHAV SHARMA, JM:

The cross appeals in ITA Nos.4945/Del/2019 and 4495/Del/2019 are preferred by the Assessee as well as the Revenue against the order dated 19.03.2019 of the Commissioner of Income Tax (Appeals)-6, Delhi, (hereinafter

referred to as ‘the Ld. First Appellate Authority or in short as ‘ the Ld. ‘FAA’) in appeal No.10131/18-19 arising out of an appeal before it against the order dated 27.03.2015 passed u/s 144 of the Income Tax Act, 1961 (hereinafter referred to as ‘the Act’) by the ITO, Ward-18(1), New Delhi (hereinafter referred to as ‘the Ld. AO’).

2. Heard and perused the record. The assessee company, during the relevant financial year, had purchased immovable property at an auction from Kotak Mahindra Bank for a total consideration of Rs.7,31,00,000/- plus stamp charges of Rs.43,86,000/-. The ld. AO passed an *ex parte* order u/s 144 of the Act making an addition of Rs.7,31,00,000/- on account of unexplained source of this investment in the property. The same was challenged by the assessee before the ld.CIT(A) filing all the evidences which were not considered by the CIT(A). Therefore, when the assessee approached this Tribunal, the order of the ld.CIT(A) was set aside with the direction to admit the additional evidences and decide the appeal afresh, after providing opportunity of being heard to the assessee. Subsequently, the impugned appellate order has been passed by the ld.CIT(A), wherein, after taking into consideration the evidences of the assessee, addition to the extent of Rs.5,55,50,000/- was deleted and the remaining addition of Rs.1,75,50,000/- was confirmed on the ground that the assessee had failed to prove the source of cash deposit in bank account used for

repayment of the loan taken from M/s LMJ Logistics Ltd., for purchase of this property. Accordingly, both the assessee and the Revenue are in appeal.

3. At the time of hearing, the Id. AR, bringing forth the facts of the case, submitted that while purchasing this property from Kotak Mahindra Bank, as the assessee was not having requisite funds, a loan was taken of Rs.6,19,00,000/- from Development Credit Bank, but, its disbursement was taking time, so, an unsecured loan was taken from M/s LMJ Logistics Ltd., and, subsequently, when the loan amount was disbursed in the Axis Bank account, the same was used to repay the unsecured loan from M/s LMJ Logistics Ltd.

3.1 The Id. AR has submitted that the initial addition was made under scrutiny assessment for the reason that the AO had examined large investment in property as compared to the total income and which was matter of dispute before the Id.CIT(A) in the first round of litigation, wherein the Tribunal had directed to admit the additional evidence of the assessee and to decide the issue. The Id. AR submitted that the Id.CIT(A), however, has fallen in error in going beyond the directions of the Tribunal in finding a new source of addition by making allegation that when an amount was returned to M/s LMJ Logistics Ltd., there was cash deposit. She submitted that the addition by the AO was made on account of alleged undisclosed source of investment u/s 69 of the Act which was changed by the Id.CIT(A) to the addition u/s 68 of the Act to the extent of Rs.1,75,50,000/-. The Id. AR has relied on the following judgements/order to

submit that it is the settled proposition of law that CIT(A) cannot examine and make an addition upon an issue which does not arise from the order of assessment without actually show-causing:-

- i. *Judgement of the Full bench of Jurisdictional High Court in the case of CIT vs Sardari Lal & Co. [IT Reference No. 227 of 1979];*
- ii. *Order of the Coordinate Bench of Hon'ble ITAT in the case of Hari Mohan Sharma Vs ACIT [ITA No. 2953/Del/2018]; and*
- iii. *Judgement of the Jurisdictional High Court in the case of Gurinder Mohan Singh Vs CIT [ITA No. 322 of 2005].*

4. The ld. DR has, however, opposed the aforesaid submissions and submitted that in both the proceedings, the ld. AO as well as the ld.CIT(A) were confronted with a situation about the source of investment in the property and in either way the CIT(A) was examining if the investment in the property was from a genuine source or it was the own money of the assessee.

5. After giving thoughtful consideration to the matter on record and to the above submissions, we are of the considered view that there is no dispute on the settled proposition of law that CIT(A) can make an enhancement only after showcausing the assessee and at the same time question of taxability from new source cannot be determined by CIT(A) as first appellate authority and reliance for same is placed on the Hon'ble Supreme Court judgement in *CIT vs Sardari Lal & Co(supra)*. In the case in hand, the assessment order was with regard to

questioning the source of investment in the property and before the Id.CIT(A), on behalf of the assessee, relevant additional evidences in the form of registered sale deed, loan sanction letter, account statements, unsecured loan confirmations from M/s LMJ Logistics Ltd. were filed and based upon them the Id.CIT(A) was satisfied that the investment was not from an undisclosed source. There is no reason to interfere in that too.

5.1 However, the Id.CIT(A), being too intrigued, entered into the controversy on the basis of statement of bank account of the assessee with the Axis Bank that while making the repayment of the unsecured loan to M/s LMJ Logistics Ltd., there were certain repayments to M/s LMJ Logistics Ltd. and also EMI of the loan which were preceded by certain cash deposits and which were not explained.

6. The Bench is of the considered view that the Id.CIT(A) being satisfied with the additional evidences filed establishing the genuine sources of investment in the hands of the assessee for purchase of property, travelled beyond the mandate of the Tribunal in the first round of litigation vide the order dated 27.02.2018. The Id.CIT(A) was directed to adjudicate the appeal afresh after admitting the additional evidences of the assessee. Thus, the question restored to the files of the Id.CIT(A) was to examine if the additions made by the AO completing the assessment u/s 144 of the Act was not justified in the light of the evidences available with the assessee. Consequent to the filing of

evidences, if the CIT(A) intended to examine the issue further, then, at one hand same was beyond mandate of Tribunal order restoring issue to CIT(A) and otherwise that certainly required putting the assessee to notice. However, the ld.CIT(A) failed to put the assessee on notice and questioned the source of cash deposits in the Axis Bank account and considered the same as unexplained cash credits in the books of account for the year under consideration. Thus, addition made by Ld. CIT(A) on a new source, in the form of source of sum credited in book of account is not sustainable.

7. There is no force in the contention of Ld. DR that in any case the tax authorities were examining the source of investment in property, be that by way of investment or repayment of loans and that there was no change in the source of addition. We are of considered view that in the present case examining the investment in property from known source or disclosed income was a different exercise done by AO from the exercise done by CIT(A) in examining source of cash deposits in bank account . In former the issue was to examine the source as existed on the date of investment made and in later the issue was to examine the source on the date the sum was credited in the Books of Accounts. So for all reasons discussed above the assessee was supposed to be put to notice which CIT(A) failed.

8. Consequently, we are inclined to allow the grounds No.3 to 6 of the appeal of the assessee and find no substance in the grounds raised by the

Revenue. The **appeal of the assessee is allowed** and **the appeal of the Revenue is dismissed.**

Order pronounced in the open court on 24.11.2023.

Sd/-

Sd/-

(NARENDER KUMAR BILLAIYA)
ACCOUNTANT MEMBER

(ANUBHAV SHARMA)
JUDICIAL MEMBER

Dated: 24th November, 2023.

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Copy forwarded to:

1. Appellant
2. Respondent
3. CIT
4. CIT(A)
5. DR

Asstt. Registrar, ITAT, New Delhi